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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.04.2022

CORAM

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CRL.O.P.NO.8209 OF 2022

AND

CRL.M.P.NO.4781 OF 2022

Chandru

...Petitioner

Vs.

State rep by
The Inspector of Police,
Cuddalore OT Police Station,
Cuddalore District.
Crime No.306 of 2021

...Respondent

PRAYER : The Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, praying to call for the records pertaining to the FIR in Crime No.306 of 2021 on the file of the respondent police and quash the same.

For Petitioner : Mr.B.Gopalakrishnan

For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed, to call for records in Crime No.306 of 2021 on the file of the respondent police and quash the same.

2. The brief facts of the case is that the respondent has suo motu registered a case in Crime No.306 of 2021 against the petitioner for the offence under Sections 188 and 270 of IPC. The allegations in the complaint is that the petitioner in defiance of the promulgatory orders issued under Section 144 of Cr.P.C pursuant to Covid-19 pandemic had driven two wheeler near Cuddalore OT Tower Clock and when the respondent had enquired the petitioner, he has not stated any reasons. Based on the complaint given by the Inspector of Police, a case in Crime No.306 of 2021 was registered for the offence punishable under Sections 188 and 270 of IPC.



3. The learned counsel appearing for the petitioner would submit that the petitioner had come out of his house for purchase of medicines during Covid-19 pandemic period, whereas, the respondent has registered the case against him. He would further submit that the respondent cannot straight away register the case under Sections 188 and 270 of IPC and there is no material to show that the petitioner had intentionally come out of his house to spread infection to others. He would further submit that the Government has also issued orders directing the withdrawal of cases registered during Covid-19 pandemic period for violation of Covid-19 pandemic rules.

4. The learned counsel appearing for the petitioner would further submit that the facts of the case are similar to the case covered in the decision reported in 2018 2 LW (Cr1) 606 [Jeevanandham and others Vs The Inspector of Police Velayuthampalayam Police Station, Karur District] dated 20.09.2018 and in Sri Raja Vs Inspector of Police, Sivakasi Town Police Station Virudhunagar District and other in Cr1.O.P(MD). No.7922 of 2019 etc batch dated 30.08.2019.

5. The learned Additional Public Prosecutor appearing for the respondent would submit that the petitioner was found riding his motor cycle on 30.05.2021 at 08.15 am during Covid-19 pandemic/lockdown period, in defiance the Standard Operating Procedure (SOP) issued by the Central and State Government. He would further submit that the facts of this case are covered under the Judgment referred to above.

6. Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondent.

7. In the Judgment reported in 2018 2 LW (Cr1) 606 [Jeevanandham and others Vs The Inspector of Police Velayuthampalayam Police Station, Karur District] dated 20.09.2018, it has been held that the police has no right to file a case under Section 188 of IPC and to investigate the same without getting proper permission from the concerned Jurisdictional Magistrate. Here, there is no material to show that before registering the case, permission of the concerned jurisdictional Magistrate has been obtained. In such circumstances, the second respondent has no right to register the case and to investigate the matter.

8. Further, there is no material to prove that the petitioner had knowingly attempted to spread infection of any disease dangerous to life and it is also not the case of the respondent that at the time of the incident, the petitioner was affected by Covid-19. So, the contention that coming out during pandemic period will spread the disease is without any basis.



12. Taking all these aspects into account, this Court is of the considered view that the proceedings pending in Crime No.306 of 2021 dated 30.05.2021 on the file of the respondent is nothing but abuse of process of law and is hereby quashed. This Criminal Original Petition stands allowed. Consequently, connected Criminal Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-VIII)

// True Copy //

Sub Assistant Registrar

nr/lok

To

1.The Inspector of Police,
Cuddalore OT Police Station,
Cuddalore District.

2.The Public Prosecutor,
High Court of Madras.

+1cc to Mr.B.Gopalakrishnan, Advocate Sr.No.24854

Crl.O.P.No.8209 of 2022
and
Crl.M.P.No.4781 of 2022

MT(CO)
RVM(05/05/2022)